

**IN THE U.S. PATENT AND TRADEMARK OFFICE**

Application No.: 10/073,931

Filing Date: February 14, 2002

Appellants: Bharat Tarachand DOSHI et al.

Group Art Unit: 2873

Examiner: Evelyn A. Lester

Title: METHODS AND DEVICES FOR PROVIDING OPTICAL SERVICED-ENABLED CROSS-CONNECTIONS

Attorney Docket: 129250-000950/US

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**APPELLANTS' REPLY BRIEF ON APPEAL**

**MAIL STOP APPEAL BRIEF - PATENTS**

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January 16, 2008

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**ARGUMENTS**

**A. The Section 112, 2nd Paragraph Rejections**

The Appellants appreciate the Examiner's withdrawal of these rejections.

Accordingly, Appellants respectfully submit that claims 16-18 are now allowable. Appellants respectfully request that the members of the Board indicate the allowance of these claims in their decision.

**B. The Section 102 Rejections**

It appears that the two main areas of disagreement between the Examiner and the Appellants are whether Fee discloses: (a) a ULR optical network (and therefore signals within such a network); and (b) non-dedicated processing units. The Appellants position is that Fee does not disclose either; the Examiner takes the opposite position.

**(i) Fee's Optical Network**

As the Appellants presently understand the Examiner's position, the Examiner acknowledges that Fee does not explicitly mention ULR networks or signals. However, the Examiner believes that "Fee et al teach ULR in their functional descriptions". In particular, the Examiner points to Fee's use of "simple amplification" and the present specification's mention of simple amplification as the main basis for supporting Fee's implicit teaching of a ULR network or signals. The Appellants disagree.

As is well known in the art, all optical networks use some form of simple amplification. The mere fact that ULR networks and the optical network discussed in Fee use it as well has little or nothing to do with whether Fee discloses, either implicitly or explicitly, ULR networks/signals.

Further, Appellants note that the words "simple amplification" do not appear in the claims. Thus, the fact that Fee discloses an optical network that uses such amplification does not qualify Fee as §102(b) prior art.

The simple fact is that Fee gives no indication that it is directed at a ULR network. The Examiner's statements, it is respectfully submitted, are pure

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speculation and do not constitute a *prima facie* basis for a rejection under §102(b).

As the Appellants have stated before, because Fee appears to disclose the repeated need for amplification of an optical signal by an amplifier 210 before the signal is input into an optical interface 208 or backplane 308 it is highly unlikely that Fee is directed at a ULR network/signals.

**(ii) Fee's Functional Units Are Dedicated to a Particular Set of Links**

As the Appellants presently understand the Examiner's position, the Examiner believes that because Fee's functional units can handle more than one optical signal they are "non-dedicated". Appellants disagree.

Initially, Appellants note that it is not clear from Fee whether its' units 302 can handle more than one optical signal. Assuming for the sake of argument that they can, this does not make the units 302 non-dedicated.

The clearest indication that the units 302 are the opposite of non-dedicated, i.e., dedicated, is found in column 5 where Fee describes "multiple input/output switches" being built by "cascading basic one-by-one switching blocks" (column 5, lines 38-40). That is, because Fee's switch 308 is dedicated to a set number of signals/links, additional switches are needed to service other signals/links.

The Examiner takes the position that Fee does disclose non-dedicated processing units because the claims can be interpreted as receiving a single link. While this may be so, the term "non-dedicated" describes the processing unit, not the link. That is, this term describes the ability of that processing unit to process any link. This is not the case in Fee because Fee's units 302 can only process a certain number of links.

The fact that a dedicated set of links in Fee may be connected to any one of its dedicated functional blocks does not make the blocks "non-dedicated" because these blocks can only be used with a limited set of signals.

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**(iii) The Claims Do Not Contain “Means” Phrases**

In the Examiner’s Answer the Examiner appears to take the position that the claims contain “means” phrases in accordance with §112, sixth paragraph. The Appellants disagree. Although the Examiner does not explicitly indicate which claims contain such clauses it appears that the Examiner is focusing on claims 1 and 6. Thus, the Appellants’ comments will be limited to those claims.

As the Examiner recognizes, if a claim contains sufficient structure (see for example *Rodime PLC v. Seagate Technology, Inc.* 174 F.3d 1294, 1302 (Fed. Cir. 1999) and the term used in the claim to describe the structure has a reasonably well understood meaning in the art (see for example *Greenberg v. Ethicon Endo-Surgery, Inc.* 91 F.3d 1580, 1583 (Fed. Cir. 1996)) then the claim term falls outside §112, sixth paragraph.

Both claims 1 and 6 contain the term “optical switch”. This phrase is a sufficient structure whose meaning is well understood by those in the art. Accordingly, §112, sixth paragraph does not apply to this phrase.

In sum, because Fee does not teach each and every feature of the claimed inventions, Fee cannot provide a basis for a rejection under 35 U.S.C. §102(b).

Accordingly, Appellants request that the members of the Board reverse the decision of the Examiner and allow claims 1, 4-6, 9-11, 14 and 15.

**C. The Section 103 Rejections**

The Appellants note that their previous arguments with respect to the patentability of claims 2, 3, 7, 8, 12 and 13 did not rely upon a lack of motivation to combine Fee and Wong or Sharma. Instead, the Appellants position is that even if the references can be permissibly combined such a combination does not disclose or suggest the claimed inventions.

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**Conclusion:**

Appellants respectfully request that the members of the Board reverse the decision of the Examiner and allow claims 1-18.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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